

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Regular Meeting

September 23, 2009

Chairman Cathleen Hall called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room 3 at the Newington Town Hall, 131 Cedar Street, Newington, Connecticut

I. ROLL CALL

Commissioners Present

Commissioner Casasanta
Commissioner Ganley
Chairman Hall
Commissioner Kornichuk
Commissioner Pane
Commissioner Pruett
Commissioner Schatz
Commissioner Aieta
Commissioner Camerota
Commissioner Lenares

Commissioners Absent

Staff Present

Ed Meehan, Town Planner

II. PUBLIC HEARINGS

- A. PETITION 25-09 – Assessor Map 11-335, 00A, East Cedar Street (North Side), 29 acre vacant parcel approximately 730' west of the intersection of East Cedar and Russell Road, Marcap Co., LLC, owner, Toll Brothers, Inc., 53 Church Hill Road, Newtown, CT 06460, applicant, represented by Attorney Thomas J. Regan, Brown Rudnick, LLP, 185 Asylum Street, 38th Floor, Hartford, CT 06103-3402 request for Zone Map Amendment CD Commercial Development District to R-12 Residential District.**

Chairman Hall: If the petitioner is here, come forward please, state your name and address for the record.

Attorney Regan: Thank you Madam Chair. Good evening, my name is Tom Regan, a partner with the law firm of Brown, Rudnick, LLP, City Place I, Hartford, Connecticut, 06103. I'm here tonight representing the applicant, Toll Brothers, one of the nation's largest home builders. We're appearing this evening to request a zone change for an undeveloped 29 acre parcel on East Cedar Street. The property currently owned by Marcap LLC is currently zoned CD and we are requesting a re-zoning of the property to R-12. As some of the Commission will remember, we were here with a very similar request in 2005. At that time we petitioned the Commission for a zone change for the property commonly referred to as the Hartford Drive-In parcel which was also zoned commercial, had been vacant for many years, and had been subject to several failed proposals for a variety of uses. The property presented a very challenging natural topography for development, several access issues and a location on a busy state highway. At the time we were requesting that the property be rezoned to an R-12, to order to construct a town house

community. The Commission granted that zone change and later approved the project now known as Newington Ridge. This project which is now fully developed has met with great success. The development was completed in three years with the units selling at the rate of twenty-four homes per year in a very, very difficult home selling market. The average sale price for those units was \$343,000 per unit with a mix of almost equal first time home buyers and young professionals and empty nesters with an average income of \$124,000 per year. There are many similarities between the Newington Ridge project and the zone change request before you this evening. East Cedar Street property has been the subject of several unsuccessful proposals over the past ten years for a variety of commercial and multi-family uses. The property presents a challenging topography for development, and access is from a busy state road. East Cedar Street property serves an important transitional area between the commercial uses on Russell Road and the residential neighborhoods to the northwest, very much the way Newington Ridge serves as a transitional use between the Berlin Turnpike and the neighborhoods above it. Additionally the property has a significant ridge line and trail area which any development must preserve. For all of these reasons we believe a change in the zoning of the property to an R-12 zone will allow the flexibility necessary to develop this property in a matter very similar to Newington Ridge and create another project for the benefit of Newington. We have three consultants with us tonight who are responsible for the information that you have seen, that was filed with the application, they are each going to come up and briefly summarize their reports. The first is John Mancini from BL, who is our engineer on the project, and he will walk through the characteristics of the property, and its proposal for development.

John Mancini: Good evening. For the record, John Mancini, a principal engineer for the BL Companies, located at 355 Research Parkway, Meriden, Connecticut 06450. I think, to take a moment to follow up on Tom's initial highlight, we were fortunate to be able to work with Toll Brothers and the community and the multiple staffs in town to actually put together the nuts and bolts of the plan that ended up being built out there at the Hartford Drive-In, and we were also involved in one of the controversial commercial applications that wasn't successful on that site, and for that reason, if you look at the lay of this land, and you really, all you have to do is envision yourself on the Berlin Turnpike all over again, looking up at the rock cut, and if you put yourself on 175 and you look up at the rock cut, you start to realize that some of the same topographic three dimensional concerns from a civil engineering, grading layout standpoint exist in front of you. What I mean by that is, for instance, if you were to develop the land as commercial, as it is currently zoned, most typically with commercial, albeit you can lay it out in multiple ways, is you have a much larger, the most efficient way to develop property commercially is to have as big of a development footprint or building that will suit your needs as potential tenants arrive, and then you will have parking lots that certainly exceed the amount of required parking that a residential community would need. So you have basically, if you can picture, you have topography that is rolling in all directions, but you are forcing this development plate that is altogether, down on top of it, and usually when you do that there's a lot of things that are not exactly working as efficiently as when you lay out residential and that is grading, the way you manage storm water, the way you can access the property, the grade that perhaps commercial vehicles can make to a property versus a residential street in keeping with the regulations of the residential street which are more flexible. So, for instance, if you are doing residential and I think, not to harp on it, but I think as you see Newington Ridge there at the drive-in site, where you see the cascading homes, you are able to work with the topography of the land. Much like on this development, as you develop a residential street, there are a lot of tools with residential homes that you can use to work with the grading and thus limit your total disturbance. You can have walk out basements, you can have drive under garages, you can have project buildings that are rain breaks in the units themselves. There are a lot of different tools that you can use. When you look at the raw bulk zoning standards for the two zones, at the naked eye it doesn't appear that there is a huge difference, you know, in terms of minimum green space and side yard and front yard setbacks and all, but

when you literally sit down and do a layout and conceptually doodle a commercial development versus a residential development, there is a big difference.

In terms of run-off, for instance, when you are doing residential, you can take and do, develop nice yard swales, that you see in a lot of developments, you could put roof drainage into isolated infiltration pockets. When you are developing a commercial development, and you have a large run-off parking lot, you are really limited. You need to do underground detention, you need to do surface detention, in a greater quantity in a bigger area, all driven again by isolated big spots, and also just in terms of the possibilities of you know, other elements such as traffic for instance. The residential community will certainly generate less peak hour trips than some of the commercial uses that could go onto that site and again, keeping with the lay of the land, if you are accessing what is really a residential road, and with more of a limited access to 175, Russell Road and 175, so I think there are a lot of advantages that you could, when you start to look at things three dimensionally, from an engineering standpoint, you can really see the benefit of what the lay of the land means in terms of the terrain there for commercial versus residential. Lastly, I really think with the residential you have a better, because you are able to work with the grade, you have a better, you have a greater ability to be able to buffer your edges so that whatever you are buffering, whether it is 175, whether it's the rock cut face, whether it's the neighborhood behind us, you are able to do more with that because of the use of residential.

So at this time, I believe the next speaker is.....

Attorney Regan: Do you want to talk to the demographics?

John Mancini: I'm going to, thank you Tom. The board in front of you is an overall aerial map that is an existing topography map. East Cedar Street is below us here on this plan, north is running straight up the page, the scale is.....

Chairman Hall: Mr. Mancini, could you please bring that to the front. Just bring the whole easel up to the front so that everybody can see it.

John Mancini: Okay. So, in front of you this evening is this map. So what you see here is one inch is equal to 120 scale map. Our site is depicted by the heavy black line. Below on the south side, north being straight up the page, this is East Cedar Street and over to the east here, or the right on this map, is Russell Road. This is also a state route, SR 424. The property in this area has a limited access point to where the existing driveway is. The rest of the property is non-access along there, and I don't think you could physically access it anyway. Then of course there is an old highway right of way, town owned, along the back edge, and you can see that this is an area where disturbance has occurred, and clearing has occurred, and towards the back there is a small pocket of wetlands here, and I believe a large portion of this area would be, under a development scenario, would be undeveloped in any development scenario. As I believe I mentioned earlier, there is a pretty good drop off in grade through this area, so much like the drive-in site, we're going to really work with that plateau, and work with the grades that are up on top, and I really feel like the characteristics of the existing land, I'm not sure how this could ever be used for commercial, to be honest with you because the access from here, for any type of commercial development, where, for instance maximum grades for trucks for access and stuff would be limited to like the range of you know, five to six percent, it varies greatly from what you can do in a residential street. So, with that said, I'd like to turn it over to Dick.

Richard Harroll: Good evening, my name is Richard Harroll. I'm a principle with the firm of Harroll, Mickalowski Associates located at 500 East Main Street, Branford, Connecticut 06405. John has gone through a discussion of the site and the scale site specific. As a planner, I'm going to talk about broader issues in relation to the existing land use patterns and also the existing Plan of Conservation and Development as well as the plan that is currently under preparation by the Commission and then going to public hearing next month, so this is a

somewhat unusual approach to, this part of report on my part, because again, we are in that transition period between two plans of Conservation and Development. I'll go through briefly, for those who want to follow along, the Commission has I think in their package, a copy of the report that I am actually going to be using to summarize.

I can first point out about this site that we are discussing tonight is within the areas surrounding the site, there is really no established land use pattern. The parcel itself, the CD District designation is only, there are only four parcels of that designation in the entire town, there are no others in this surrounding area, so we are not talking about a re-zoning of a parcel that currently is already consistent with many of the surrounding classifications of land use as well as zoning. In terms of the uses, they range from everything from industrial to outdoor storage and again when I say uses, when we look at land use, it's also the area adjacent, in the adjacent community because we are looking at the whole picture, so some of the uses I mentioned are not actually in Newington itself, but impact the site and visa versa. So there is no land use pattern that we have to deal with and the aerial photo that is in your report, as well as the large version on the easel display that graphically, I'm not going to go through that in detail. The physical environment, as John said, the topography of the site and surrounding area is the most striking natural environmental feature. As John as explained the advantages of the zone change to a residential use will allow much greater protection of such features than the current zoning of the CD. On page two of the report, I go through item by item on the 95-05 Plan, your existing plan, various statements that relate to the site and to the proposed zone change. I'll just briefly touch on those.

There is a statement in your current plan about the fact of the dwindling supply of property in the community and some agricultural properties, your last farm properties would be at risk for development, being developed for housing. This is a case similar to the drive-in site, where in fact you are not taking any agricultural land out of the inventory.

It talks about Newington being a net importer of jobs meaning people living outside of the community coming into Newington and in this case, housing would be produced on the site and I think interestingly the site is in close proximity to your town center and therefore residents of this site would provide consumer spending to support your town center as well as the Berlin Turnpike, and looking at your proposed plan, the town center, the kind of uses talked about there, are particularly appropriate in terms of what would be supported by residential development, folks with the incomes that are projected for this site. Talks about traffic in your current plan in relation to the Berlin Turnpike, trying to minimize conflicts with, between land use and traffic, as pointed out by John, an R-12 zone designation would generate less traffic than the CD designation does. It also says in your current plan about multi-unit housing being appropriate adjacent to the Berlin Turnpike on sites larger than five acres, again, this site meets that requirement. Lastly, it talks about the use of Conservation easements to protect wetlands, flood plains, ridgeline areas, and this proposal, to an R-12 would permit that to happen and the use of extensive conservation easements and open space on the site would advance this policy.

As I said, we then looked at the Plan that is under discussion and I think the timing is quite appropriate because you will be having a public hearing on the Plan, there will be much discussion and clearly the Plan is the result of much research, analysis and discussion by the Commission so it is a well thought out document that is now going into the public forum for discussion. Similarly to your current plan, there are various parts of the proposed plan that relate to this site. Some of them are very similar to the existing plan, for example, the preservation of natural resources of slopes greater than twenty-five percent, as John pointed out, with this site the steeper parts of the site would be most naturally under conservation easement and also, with residential, it would not be the need as it would be under CD for extensive excavation and grading that would affect some of these slopes.

The open space plan interestingly, this area you're talking about tonight, including the parcel and the area north, throughout your proposed plan is designated various places to, for example, for open space it says, desirable open space area and in parentheses, awaiting public input, so this

area in general, there are many of your maps and proposed plans where this area leads me to believe that it's going to be extensively discussed at the public hearing, but in terms of open space, again, the ability here with this site, with the unimproved right of way along the northern boundary of the site, there's the ability to link an open space corridor which is proposed in your plan with Balf Park, so this will provide again, an addition to the on-site conservation, there will be the ability to link and particularly for wildlife, this corridor will become very important. Again, this open space section talks about, in the community character plan about the preservation of Cedar Mountain and proposed greenways, so this re-zoning would be consistent with that.

Then there is a section of the proposed plan that is called development strategies. Very I think appropriately you are developing a plan that has the approach of development nodes. You have transit oriented nodes, you have town center nodes, this site with a change to residential really again impacts both of these nodes. Number one, residents will be able to support the town center with consumer power, and visiting other things in the center, library, institutions and all, and also the transit concept. This site is within a quarter of a mile of a transit, in this case being bus, as again it is pointed out in the plan as something to encourage, so residential development makes sense.

There are a couple of things, you have opportunity sites, in the plan, and this site is specifically number fifteen in your plan. That is designated as a possible open space and development, it has both, it's mixed designation, and again, this type of change would allow preservation of the steep slopes and also minimization of impacts that might occur from the CD zone development. The residential development plan portion of your plan has a statement that talks about, and again, this area is designated as an area that resolves desirable (inaudible) in the area. There is the discussion of the possibility of residential, of lower density in the area east of Mountain Road, at one unit per acre. My belief as a planner is, the designation of the R-12 designation for this site would be a good transitional density between East Cedar Street, which is a fairly busy street, some of those uses I talked about before, that are not potentially consistent with single family developments, but we have, as we know, a lot of areas to the north of this site, which is going to be, I'm sure, under discussion in years going forward as future development, so again, I think the area east of Mountain Road, I think that this portion makes sense for the density that we are talking about.

The business development plan portion of your proposed plan, again, references the town center, and it also talks about this area, where the site is located potentially being a mixed use gateway zone and considering the size of this site, even though it is substantial, the amount of this site again within the large area which in the future will be subject to development, the R-12 development of this site, I think over time will result in being a portion of the mixed use area in this portion of Newington.

John touched on things, so I'm not going through things I have in my report about impacts on impervious surface and other things on the site itself, with the zone change.

Infrastructure, again it talks about Balf Park, as I mentioned earlier, this site, with the greenway, you would be linking to Balf Park, both from a circulation pedestrian, bike, whatever aspect as well as from a nature connection for various types of wildlife.

Transportation plan, I mentioned within a quarter mile of the transit, utility infrastructure, the plan proposes the areas that MDC service be extended, into sections of Newington not connected to such services. There have been discussions with MDC and the capacity for such connection exists with this site.

Lastly, future land use conditions, this zone change request related to that, some of the specific, for example, of the height, in addition to the ability to plan the site, as you know, the special exception under the CD you can go as high as five stories, this is not allowed under the R-12. Again, the new road, the conservation areas proposed would provide a buffer on the east side of the site for the non-residential uses to the east, and the again, from a tax base situation which we talked about in terms of supporting the town center as well as, Don Klepper-Smith is going to follow me and he's going to talk specifically about fiscal impact of this project, and lastly, John

touched on the access issue that will be one point of access to East Cedar Street which will be an advantage from a traffic standpoint because again, residential development doesn't value multiple access points as much as (inaudible) by itself, and over time, proposals for commercial development, I think you will be seeing applications to attempt to have multiple access points. With that, in conclusion, my opinion as a professional planner is that this proposed zone change is consistent with what both the existing plan as well as the principals outlined in your proposed Plan of Conservation and Development.

Donald Klepper-Smith: Good evening, for the record, my name is Don Klepper-Smith, I'm chief economist and director of research for DataCore Partners which is an economic consulting firm based in New Haven, Connecticut. I want to thank members of the Planning and Zoning for the opportunity to be here. My firm was asked to conduct a fiscal impact analysis of the proposed development and we have prepared a full report. However, in the interest in time, I'm going to keep my remarks brief and to the point and just go over some of the key points. By way of introduction, I'll briefly go over my professional credentials. I've been doing fiscal impact studies for over twenty-five years. I've conducted similar sorts of analysis, dozens and dozens of studies, I was recently here before the Commission, I did the fiscal impact study for Stew Leonard's and we also did the impact study for Newington Ridge. I presently chair the Governor's Council of Economic Advisors, I'm a part time economic commentator for Channel 8 TV in New Haven, and I recently stepped down as president of the Hartford Area Business Economists.

What I would like to do is sort of keep this brief and to the point, and I'd like to touch on four basic topics. I want to talk about the process of estimating fiscal impacts, both with respect to inputs and outputs, number two, I want to talk about student counts and education expenses, and then I want to talk, three, about the direct net fiscal impacts from the development and then summarize with some conclusions.

First off I'm going to start talking about the process, of estimating fiscal impacts and looking at inputs and outputs. According to the new Praction Guide to Fiscal Impact Analysis one of the most commonly used methods is the per capita multiplier method and it's basically an average costing approach for projecting the impact of population change on local municipal and school district costs and revenues. This method has been applied to almost every type of fiscal impact situation. It was the method that we employed for our study.

I want to be clear here, when we talk about fiscal impact analysis, we talk about the direct current public costs and revenues associated with residential or non-residential growth, as the case may be, and indirect impacts are not treated due to number one, the near impossibility of predicting accurately secondary consequences and number two, the potential to double count.

When we talk about inputs and the fiscal impact analysis we have to talk about things that are indirect, that are sort of peripheral to our study such as consumption of local goods and services, taxes paid by future employees, these are not considered in our study. They are peripheral to the study and as is the case of replacement households, (inaudible) grants are also excluded because they represent indirect economic impact. Student demographic multipliers were basically issued recently by Rutgers Center for Urban Policy Research and they update multipliers used and issued prior to the census. More importantly these new multipliers are Connecticut specific versus regional specific and they are more accurate and these are multipliers that we used in our study.

When we talk about the areas of impact on Newington's finances, we considered the whole non-education budget. We are talking about police services, fire services, roads, public works, recreation and health, other services, capital spending, administration, benefits, schools, everything is considered. So when we talk about the process of looking at the entire non-education budget this represents the most comprehensive view of municipal expenses. Again, if you look at the per capital multiplier as an average cost in process, we are looking at the latest expenditures, using the most recent town budget, expenses for local government, public safety, capital spending, parks and recreation, exactly as we just displayed.

When we talk about student counts and education expenses, basically we have information issued from the State of Connecticut and there is a strategic school profile for the Town of Newington. Basically we can talk about two parts here, the part that is paid by local municipality and that which is paid by the State which is excluded from our analysis. The total cost of educating a student according to the new state profile is roughly speaking \$12, 157 with about seventy-six percent of that being paid by local property taxes. That means that the local cost per student right now is about \$9300.00. When we talk about the impact on the Newington school system, the building mix of 113 two bedroom/three bedroom units necessarily constraints student counts, as a result DataCore Partners estimates that the development will generate a maximum of twenty-seven students entering the local school system, and this assumes that all twenty-seven come from outside of Newington presently and are not here in the district. So this represents, for all intents and purposes, an upward bound on your existing base of about 4600 students, this means that we are talking about an enrollment increase of about .6 percent, so if we were to characterize this increase in terms of heavy, light, medium, we consider this to be, according to the dozens of studies that we have seen in the past, a very modest impact.

When we talk about net fiscal impacts for the 113 residential units, basically let me summarize and say that if we look at full build out in 2015, the one year net fiscal impact would be \$250,000 based on 27 students, one year school class of \$317,000, one year municipal expenses of \$360,000, one year gross taxes of \$929,000 and a total resident count of 264 folks. That means that your average net impact for each of those units is about \$2200.00.

So to summarize, the proposed East Cedar Street development of 113 residential units consisting of two and three bedroom units makes economic sense in the current environment as it is fiscally stimulative to Newington's finances. You are talking about a net benefit of a quarter of a million dollars, the average net benefit is about \$2200 and again, this is based on conservative assumptions. The details spread sheets and all the calculations are contained in our report, so I would be happy to entertain any questions.

Attorney Regan: Thank you, Don.

Donald Klepper-Smith: Thank you, and thank you Madam Chair.

Attorney Regan: The Commission has full copies of both Mr. Klepper-Smith and Mr. Harroll's reports. One additional item to distribute tonight is a copy of the 2008 annual report from Toll Brothers, a publicly traded company, one of the largest in the country, headquartered in Philadelphia with divisions around the country. There is a division here in Connecticut which has been in existence for approximately twenty years. I think Newington Ridge experience, everyone has a familiarity with Toll products and the kind of product that they bring to the market and the kind of developer that it is, so I think with the annual report, I'll leave it at that, and that concludes our formal presentation and I would be happy to take any questions at this time.

Chairman Hall: Does anyone have any questions for Mr. Regan at this time while he is here before we go to the public?

Commissioner Schatz: I have one, I'm not quite sure, your engineer says that this would be a good thing for this location, and yet he represented the one that he said would be good too. I'm confused as to what your engineer was talking about, in other words, it wasn't good for the commercial side of it, which he represented and said it was great when he was here....

Chairman Hall: That was for the other site that they already developed.

Commissioner Schatz: No.....

Commissioner Pane: I understand Bob. I think you are right, but I think he was representing somebody different maybe then.

John Mancini: No, I'll clarify it. The, what I was saying was, probably fifteen years ago when the drive-in was first going to be developed, as commercial.....

Commissioner Schatz: So you have not represented this property before.

John Mancini: No, no,

Commissioner Schatz: I just wanted to be sure.

Attorney Regan: To be even more clear, John and I were both involved in a proposed retail development on that property that didn't turn out so well.

Chairman Hall: Any other questions, quickly before we go to the public?
We'll go to the public portion and then see if we have any questions. At this time, we'll go to the public. Anyone from the public wishing to speak in favor of this petition, come forward, state your name and address for the record.

Ken Kelly, 365 East Cedar Street: I'm directly across from that property. When I first heard about it, I got quite excited and especially for my customers, for their safety, coming in and out of my driveway. For the past twenty-seven years I've probably had fifteen episodes where people lost cars, got injured and whatever from the traffic. This traffic light and driveway that is going in I think is going to slow the traffic down, and the project is going to bring in business to local businesses including myself and help the economy so I think it's a good idea and it will keep the kids out of that property. I don't know what they are doing in there but I see a lot of traffic going in and out, but I think that it is a good idea. Thank you.

Audience: Can we just ask a question, or do we have to speak for or against?

Chairman Hall: I usually get to the speaking neither for or against, just wishing to speak, I usually do that at the end. Anyone else wishing to speak in favor of the petition? Anyone wishing to speak in opposition to the petition? Come forward, state your name and address for the record.

Beth Critton: I am here tonight on behalf of the Connecticut Humane Society. I have listened carefully and I have read both the present and the proposed Plan of Conservation and Development. I'll cut to the chase first and tell you that the reason that we are opposing this is because this particular development proposes to open the environmentally sensitive Cedar Mountain Ridge line to high density residential development, immediately adjacent to established commercial industrial institutional uses. It is not consistent with the present Plan of Conservation and Development which clearly and unequivocally earmarks this parcel for commercial development and it is not consistent with the vision of your proposed Plan of Conservation and Development, and I hate to waste valuable seconds on it, but this is the vision that drives your new plan. Newington will protect its environmental resources, particularly wetlands, and Cedar Mountain Ridge Line. Additional open space will be protected and high priority will be given to the stewardship of the community resources. Higher density residential developments may be considered where traffic, services, and opportunities for mixed use, this is not a mixed use community, it's a single high density use, where those uses are compatible with adjacent land use, and where there is infrastructure capacity. The single report that I read in the Planners file today with regard to infrastructure capacity showed a very skeptical MDC. Perhaps there will be additional information on water availability, but there is a question on the feasibility of water

delivery here, and my reading of your Plan of Conservation and Development is that there is not currently sewer capacity in this area. That certainly would be essential to any zone change. The Connecticut Humane Society has its headquarters on Russell Road. It has an animal shelter, a kennel, medical treatment. It provides job and volunteer opportunities. It also disposes of animal and medical waste, including incineration of that waste, not a use that you want immediately next to a high density residential development. The Humane Society performs an important public function for the Town of Newington and the region. As your Planner in his report told you, you may not give deference to the applicant. You are the zoning authority, you have the authority to make your decision based on what you truly believe is in the long term interest of your community. You have denied proposals for this site multiple times, and there are no reasons presented tonight why you should reverse those denials. Any zone change must be consistent with your current Plan of Conservation and Development until such time as it is changed. The proposal is incompatible with abutting industrial and residential zone. Land uses include machine shops, a stone and landscaping yard and established institutional uses. The property provides a buffer to the Humane Society, and to lose that buffer, I visited the Humane Society property today, and it really invites volunteers to come there, and residents to come there, and what is being proposed is basically to take away all that buffering and have this immediately next to a high density neighborhood. I don't have much time, but I do have to tell you that one of the few cases that I lost had to do with a woman who wanted to keep fifteen dogs. I fought very hard on her behalf, but the neighbors objected to the barking of these dogs. We have approximately three hundred animals on the site, they are not all outdoors barking, but with this woman, and her case was reported at 277 Conn. 645, went all the way to the Supreme Court, the neighbors were relentless, complaining that this was a nuisance next to their residences. My client went so far as to keep her dogs indoors far more than she wanted to. She never let them out at night, but the Town Zoning Enforcement Officer heard endlessly about barking at night. My client finally went to the extent of de-barking her dogs so they could no longer make noise. The town neighbors still complained. The town had to deal with nuisance claims, the Zoning Enforcement Officer had to bring complaints, there were law suits, this use is bringing residential development extremely close to an established use, and it is inappropriate to that use.

With respect to the commentators, I will say, these are all respected gentlemen, but they have chosen, very selectively what they presented you. I could go through your Plan of Conservation and Development and find twenty-five things in favor of opposing it. They have extrapolated bits and pieces, nuggets of your Plan of Conservation and Development, and told you that you should base your decision on that. I ask you to read your Plan of Conservation and Development as a whole and take this opportunity as a whole.

My final comment is that fiscal impact, I was interested that Mr. Klepper-Smith did not get into indirect impact. Indirect impact on quality of life matters, and when you make this decision, your ultimate decision has to be with regards to quality of life of your town. Thank you.

Chairman Hall: Anyone else wishing to speak in opposition? Come forward, state your name and address for the record, please.

Bernadette Conway, 177 Hartford Avenue: I would like to voice my opposition to the destruction of what little bit of nature we have left in our town. I grew up here in Newington not far from the mountain and as a teenager I hiked the mountain, I may have been one of those teenagers seen coming and going at one point. I grew up in the area and I bought a home in that area and I would be directly impacted. I still hike that area, I go up there often, I take walks right by there every day and I just hate the thought of displacing any nature, what little bit of natural resources we have left in Newington. It's just something I care about, and I just wanted to state my opinion. Thank you.

Chairman Hall: Thank you. Anyone else wishing to speak in opposition? Anyone wishing to speak to the petition, neither for or against? Come forward, state your name and address for the record.

Fred Callahan, 99 Cedarwood Lane: I want to know where the driveway is that is going to come out of that property. Where's it coming out?

Ed Meehan: We're just talking about a zone change. We're not into any site plan design.

Fred Callahan: Oh, okay.

Chairman Hall: Anyone else wishing to speak, either for or against? Just to speak?

Attorney Regan: I understand from my discussions with Mr. Meehan that you intend to keep this meeting open (inaudible) with the Plan of Development.

Chairman Hall: Right, and there is a great deal of information to.....

Attorney Regan: Right, and because I didn't see the Humane Society's letter until 6:30 when I walked in, I'll comment on that as part of the next hearing. The only thing I would like to point out with regard to the issue that was raised of the Humane Society's use, is that clearly that is an established use. It's there, it's long established, it's conforming and we recognize that. We have met with the Humane Society on multiple occasions, and we have told them that we understand that this is a use, we understand that any residential project that we built would have to recognize that use, that if this turns out to be a communal community such as Newington Ridge, it would be a common interest community and therefore it would have declarations, and that use would have to be disclosed in those declarations. So with regard to the concern about nuisance suits being brought, I think the situation is different than (inaudible) established rather than a new use that would be incumbent on us for that community and to recognize that use, and we have met with the Humane Society on at least two occasions that I am aware of and we have made them aware of that, so with regard to the nuisance issue, we are coming in second, we understand that that use is there and that use is not changing. With regard to the comment about consistency to the Plan of Development, I will respond to that at the next hearing.

Chairman Hall: Rebuttal?

Beth Critton: I don't see the need for rebuttal, but I was so nervous that I forgot to hand you copies of the letter, and I do have those. They may be in your packet anyway. Do I give them to.....

Chairman Hall: You can give them to Mr. Meehan and he will distribute them.

Beth Critton: Thank you.

Chairman Hall: Any questions from any of the Commissioners?

Commissioner Pane: Madam Chairman, one of the reports talked about impact on school systems and it talked about costs on schools, and it also talked about advantages for taxes and stuff like that. I don't think we can take those things into consideration. With all my experience while I've been on this Commission, past town attorneys have informed us that we can never take into account the impact on our school system, on property, so I would like to just state that for the record and if you're not sure, then you can always ask our town attorney.

Commissioner Ganley: The issue was raised on another development, and it's a very simple proposition. If a developer met the zone regulations, the site plan, and it was properly zoned and he met all the regulations and someone got up and said, if you have that built, you will have to buy a new fire truck, guess what, the town would have to buy a new fire truck. We couldn't deny him the petition, saying gee whiz, we can't give you this petition because we have to buy a new fire truck, so you are on point with that remark.

Commissioner Pane: So are you agreeing, or you disagree?

Commissioner Ganley: No, I agree.

Chairman Hall: Anyone else wishing to ask a question or.....we are going to keep this open, as I said, there is a great deal of information that we need to review, syntheses, I'm sure there will be many more questions around this table and it will give us another opportunity, because tonight there may have been people who were unable to come, so.....

Commissioner Aieta: Just for the public's information, just procedurally, if we keep it open, they will have another opportunity to address the Commission with their concerns?

Chairman Hall: Absolutely.

Commissioner Aieta: And also the applicant.

Chairman Hall: Any other questions, concerns? All right, we will keep this open for at least one more meeting. Thank you for coming this evening.

B. PETITION 28-09 – 580 Church Street, Three Angels Church Seventh Day Adventist Church, Southern New England Conference Association, Seventh Day Adventist, owner, represented by Al Chatman, P.O. Box 330714, West Hartford, CT 06133, request for Special Exception amendment Petition 25-08 condition #4, “changes to architectural elevations” R-20 Zone District.

Commissioner Aieta: Madam Chairman, I will be stepping down on this because I am an abutting property owner and I reserve my right to speak as a resident.

Chairman Hall: Okay.

Diane Whitney: Good evening, I'm Diane Whitney from the firm of Holman and Connelly, representing the Church. We are here tonight for three minor exceptions, changes to the Special Exception that was granted some time ago for the church, and the three of them are the removal of the steeple, the removal of two skylights, and moving the door. The steeple really is for aesthetic purposes, the Church has decided that they prefer the building without the steeple, the skylights which were going to be in the sanctuary area, the Church has been told by the company that, they plan to video tape some services at the Church, and they are told that the skylights would interfere a lot with the video taping, would make it more difficult. The door is being moved to a really, it's a little hard to see on that elevation, but it's in a better position. It's being moved because the air conditioning units are being changed from the commercial units to the smaller residential units and that allows them to move the door to the other side of the area which puts it in better proximity to the parking lot. So, in summary, those are the changes. Mr. Chapman, is there anything you wish to add?

Al Chatman: In our original design before we had an HVAC design, the egress on that stairwell was on the south side which with the sidewalk emptying out to the turnaround where the canopy

is, when we went to the HVAC units that had the pits, we no longer had room for the landing and the stairs. When the HVAC units, with the settlement agreement was moved to the front on Pane Road, we now have the opportunity to put that doorway back where it is more functional and we are referring to this over here, back on the south wall, again making it accessible to the parking lot and the sidewalk. As Diane mentioned, in consultation with Cox Communications, we have been filming our church services for at least seven years, and in looking at the proximity of the skylights in relation to filming, it would have been an uncontrollable light source that we would have had to deal with, so their recommendation was that we not install them, and not have to deal with remediation type elements and try to control that light source that could change throughout the service based on what was going on with the weather. The steeple was just a matter of the artistic value for the church. In a business session the church membership voted, majority ruling that looking at a rendering with, and without, that that artistic value was not compelling for us to go forward.

Chairman Hall: Any questions? Anyone have anything before we go to the public?

Commissioner Schatz: So you are going to eliminate the steeple, a door.....

Diane Whitney: We're not eliminating a door, we're moving it.

Commissioner Schatz: Okay, you're moving it, and the two skylights?

Diane Whitney: Yes.

Chairman Hall: In place of that door, is that now the location of a window?

Al Chatman: Yes.

Diane Whitney: The door really is in a better spot now, it's more directly accessible to the parking lot. Not the east side, but the south side.

Al Chatman: The south side, the turnaround.

Commissioner Lenares: You said that there is a window where the door was. That's already been done?

Diane Whitney: No.

Al Chatman: Yes.

Commissioner Lenares: No, yes,.....

Diane Whitney: I'm sorry, yes.

Commissioner Lenares: You are requesting changes to the architectural design that have already been done.

Al Chatman: Yes, the architectural, we went through the proper building committee. We had no understanding that these architectural changes were under the purview of this committee, because it was architectural changes that were minor and our first indication from the town was that they were just minor changes. We went through the fire, we went through the building and we were told that these were non-issues.

Commissioner Lenares: And the sky lights were put in, and those are being taken out as well?

Al Chatman: No, the skylights were not put in.

Commissioner Lenares: But the sky lights were approved.

Al Chatman: The sky lights were approved.

Commissioner Lenares: That's two changes without the permission of the board.

Al Chatman: The permission of this board, but they were run by other departments within the Town of Newington.

Diane Whitney: The understanding that these changes required your permission came late.

Commissioner Pane: Madam Chairman, maybe the Town Planner could give us an update on that.

Chairman Hall: Let's do that after we go to the public.
I just wondered if there were any quick questions that we had.

Commissioner Lenares: Well, I have others but I can wait.....

Chairman Hall: Why don't we wait until the end after we hear from the public.

Commissioner Lenares: No problem.

Chairman Hall: Thank you. Anyone from the public wishing to speak in favor of this petition? Anyone wishing to speak in opposition? Come forward, state your name and address for the record.

Frank Aieta, 595 Church Street: Just for the Commission's information, these changes that they are asking for have already been done. Normally the applicant would come to the Commission, would say, we want to make these changes before they got to the point where it is impossible to do the changes now without ripping off the roof and making some major changes to the structure, but notwithstanding that, this Commission, a little history on this, you go back four and a half years when this was originally approved, these were the drawings that they presented to the public and to this Commission, that they had at that time, between the public and the Church, they made some changes and the residents, the abutting residents approved it based on the design that they come in with. Three or four years later they came in and made substantial changes to the architectural already and that was changing the windows, changing from a cedar siding to vinyl siding, and changing some of the windows from stained glass to plain glass. So they have already had two bites at the apple. They came in, presented to the Commission a plan that the residents approved and thought it was what they were getting, they came back, they asked for changes that diminished the look of this building, now they are coming back and making major substantial changes to the way that the public and residents thought that this building was going to look like when it was finished.

Also, in regard to the air conditioning units, you are all aware that there was a law suit on this property, and the Town was part of that law suit. There was a settlement agreement with the Town and with the Church, through the courts where we allowed them to, we asked that the air conditioning pits be removed from the Church Street side to Pane Road side. Now they are asking the people who were involved in the law suit to actually change the agreement that we have and go with a different type of a unit. I'd just like to go back to this Commission's

information that we, from the beginning, the residents, the abutting residents, from the beginning told the applicant, told their attorney, told their professionals, that this building did not require that type of a system, that noisy type of a system. They came back and insisted that it could not be done, had to be done this way, could not be done with residential units. Now we are five years down the road, with the law suit that cost myself and my neighbor a substantial amount of money and they are coming back now and they are changing it to what we asked them to change five years ago, twenty thousand something to the red for the residents. We had a law suit that cost twenty thousand dollars that asked them to change the air conditioning to what they are proposing now.

Chairman Hall: Mr. Aieta, could you please tell us what your opposition is, I mean, this is important background, but what is your opposition?

Mr. Aieta: I'm opposed to any changes to the architecture. We were shown a drawing and a plan that we approved and that is what we would like to see built. The Commission has the right under Special Exceptions to hold them to what they presented.

Chairman Hall: Thank you. Anyone else wishing to speak in opposition. Come forward, state your name and address for the record.

Michael Roche, 604 Church St: I'm the adjoining property owner to this church. Mr. Aieta got up and spoke pretty much exactly what I'm coming forward tonight and speaking against these proposed changes. Ladies and gentlemen, this project has been going on since 2005. A while ago you had Toll Brothers in here speaking about a proposed project. The difference between obviously Toll Brothers and this project is that Toll Brothers are general contractors. They come with plans for what they want to do, for what the future is going to bring. This project has been nothing but a detrimental object for me and my property since conception. This project has been abandoned, this project has been re-stated, and restarted. There were commitments made by the principals from the church back when we started this whole process, after they came back to you folks to start the project up again, there were commitments to finish the project in nine months, from the issuance of the building permit. Hence the reason for a performance bond, correct me if I'm wrong.

Their attorney got up this evening and spelled out certain changes that they are going to do to the church and neglected to talk about the HVAC system that Mr. Aieta brought up. She neglected to talk about the extension of the performance bond. I feel that this is totally disrespectful to me as a tax payer to the Town of Newington. There is still no commitment on the finishing of this project. In my possession, and Mr. Meehan asked, when I brought it to his attention, the third time my property has been flooded by the property, by doing it improperly. Not once, not twice, but three times. After the second time I came into this Commission and presented these facts to this Commission. Basically at that time I felt that I was ignored, proof is in the pudding, the pictures I brought tonight in regards to the flooding of the property, it took me coming in here to the building department, a meeting with the Town Engineer, Mr. Meehan came in, came out to my property that morning, but it doesn't solve the issue. The issue on hand is that you have a group of people who are not general contractors, who made commitments, created statements in regard to the progression and the finishing of this project and now they are standing in front of the board this evening looking for extension of the performance bond for another ten months. I find it insulting. Number one, the price on the performance bond doesn't cover what needs to be finished on this project. Second of all, the steeple. The steeple needs to be put on the church to designate it as a church. I invite everyone of you Commissioners to take a field trip to my property. Take a look at the building and what it represents as far as building in the constraints of the neighborhood that was promised by this Building Committee from the church from the get-go. Without a steeple it looks like a commercial building, correct me if I'm wrong but this parcel is not zoned commercial, it is zoned residential, a Special Exception, put the steeple on the church.

Come up with a different proposal. It doesn't have to be thirty-five feet in the air. Designate it as a church. Drive up Church Street, take a look at the churches on Church Street. What do they have in the middle of their roofs? It's a steeple, it designates that building as a church. I covered the site bond, I'd like to request and I don't think we have a choice no matter who it is, that you guys are going to approve the extension of the performance bond. Where is the pressure on the church to finish the project based on a \$40,000 performance bond? Doesn't cover the cost of the pavement, never mind what has to be done between now and next May. Why is the pressure on the tax payers to come up every single time that there is a change or a delay in this project to bring this to the attention of the Town of Newington. It's becoming exasperating. Back when this whole thing started and when we were supposed to be at the end of the project, I went to Mr. Meehan and Mr. Meehan told me that he was embarrassed by the project. I brought it up and it's in the minutes of the meeting when I came up when they wanted to start the project back up, about the embarrassment that should be held, and who is held responsible?

The HVAC system. Mr. Aieta brought up a good point where we took a law suit to get something that was ambiguous and we are led to believe now it was an ambiguous design. Why the change? Why the change after we went through a law suit, sat here at this table with their attorney, their attorney, not represented by the principals of the church, she was here by herself, and we were told at the time that the system could not be put in because of the design of the building. Here we are nine months later, the project is not done, and you are looking to change it. My (inaudible) attorney for an amendment to the agreement that their attorney sent to us in regards to us signing it for approval. I'm not signing the agreement. The only way that we are going to make this possible, and the only thing that I am going to come to an agreement with if you step back and agree to pay my attorney fees, that we took you to court for.

Chairman Hall: Let's not get into that. We're trying to establish why you are opposed to the changes.....

Michael Roche: This is part of it, Madam Chairman. This is part of the changes. Now they are going to come in and put in a system in for the building that I hired my own engineer for sound decibel readings for the existing system that they wanted for the building and showed at that point in time which they said they couldn't show, the sound decibels reading in regards to the system. That's why we had the law suit. That's why the agreement took place, and I don't feel that this is out of place in regards to what they said.

The site work, it took my property getting flooded to get this site work going again. It has now stopped again. It's been three weeks since they have done any site work on this property. This is all in reference to the extension of the performance bond. I just don't understand the constant delays to this project. There is no pressure from the Town of Newington as far as the completion of this project. I understand that they have a time frame to finish it under state law, but at the same point in time, where is the protection to the taxpayers, or the neighborhood protection as a taxpayer. Again, I invite this committee to come out, come to my property and see what I have been living with for the past four and a half years. And this project now, with the extension of the performance bond, it will be five and a half years. There is not a building that, of this nature, should take five and a half years to be built. It just shouldn't. Do they really not know what they are doing, or do they not have the funding to complete the project? Now that the site work has been done and the property has been clear cut, there's extenuating circumstances and issues that I don't feel that the fence that was proposed to create a sight line barrier between my property and their property, especially in the northeast quadrant of the property line is going to be sufficient. The grading, somebody has got to prove to me that the grading and the finished elevations are appropriate to the site plan. I've got thirteen, fourteen foot high banks that are leading down to my property line at this point.

The flooding of my property, where is the Town of Newington is regards to the erosion control factor? Factors that never came into play, that were part of the site plan. Why does it take three

floods of my property to get somebody from the Town of Newington to come out and enforce the issue?

I feel that there are two responsible parties in regards to flooding my property three different times and that is the property owner as well as the Town of Newington. My question this evening, and I'm not too sure what to do with, are the pictures and I don't know if the board has ever seen them. I've submitted them to Mr. Meehan after it happened, the extensive damage that was done to the rear of my property, the destruction of my lawn, the damage caused to the storage shed that I had put in the back of my property. Along with the pictures I've got some proposals from different contractors including the folks that supplied me with my shed, as well as a local contractor in regards to landscaping issues that the rear of my property was completely silted by the mud overflow, the pictures will defend that statement, and the total disruption of the grass that has now been replaced by weeds because I got flotation all through the back of my property. I've got to remove the shed, remove all the stone ballast from under the shed from the flooding of that property, because it's filled with clay and mud because of their non-erosion controls within the facility.

Chairman Hall: Can you please stick to the changes in the architecture please? We understand all this, we've heard.....

Michael Roche: I'm asking the direction of the Planning Committee, what do I do with all this? Do I present it, because I feel there are two responsible parties to this.

Chairman Hall: This is not the venue for that right now, this is architectural changes.

Michael Roche: I'm also asking for direction, I'm the layman.

Chairman Hall: You can sit down again with Mr. Meehan and go over this in the proper venue.

Michael Roche: That's what I'm asking. I'm against the changes that they proposed in regards to the steeple, the skylights, as well as the HVAC and unfortunately I don't have any say in regards to the extension of the performance bond, but I will ask you this evening that the value of the performance bond be increased, the work that needs to be done, to be completed by the time frame designated by the performance bond.

Chairman Hall: Thank you. Anyone else wishing to speak in opposition? Again, these are to the architectural changes.

James Lake, 621 Church Street: I think that Mr. Aieta and Mr. Roche have outlined a lot of the problems with the site, and the changes to the church from the way that it was presented originally and the changes that they have proposed, I think my main objection is that this group has gone ahead and done this work and then come to this Commission after it was done, asking permission. I think that if I did that in my home, that I would have to pay some sort of a penalty or have the work done the way that I originally said that it would be done. My other concern is what else are they going to do? What are they going to change and then come before this Commission and ask if they can change it? Are they going to ask for a cut through onto Church Street for their driveway, I have no idea, but I'm concerned about that. Thank you.

Chairman Hall: Thank you, Mr. Lake. Anyone else wishing to speak in opposition? Anyone else wishing to just speak to the project. Again, not yes, not no, just to speak to the project. Any rebuttal from the property owner?

Diane Whitney: Thank you. Many of the issues that have been discussed are not what is in front of you tonight. Certainly the change in the HVAC system, the church regrets also. There is a

new engineer who said that a residential unit would work and it was our expectation that the residents would greet that with enthusiasm since it reduces the, any potential for noise which was their main objection. However, the law suit that was brought, that was not the only issue that was in the law suit that was brought, so to say that if this change had been made originally there would not be a law suit, I think is not entirely correct. The lawsuit itself caused delay in construction.

I think if you drove around Newington and looked at most churches in Newington you would see that most of them don't have steeples. As far as making the changes and then asking for permission, certainly we wish it was the other way around. Newington doesn't have architectural review, and the church didn't realize that these changes would implicate your approval to the Special Exception. They seem to be exceedingly minor. I don't know that you would even know if there were sky lights there or not. The door is in a much better, functional place now. I believe in fact that where the door is now is where it was originally, and it only had to be moved in order to accommodate the settlement having to do with the HVAC system. As far as the steeple goes, I believe most churches in Newington don't have steeples. I don't know why that would be a requirement. A steeple doesn't make a church, the people in the church make the church. The project is within the time limits and the bond is a protection as far as the site plan is concerned. Understand that the performance bond doesn't cover everything that needs to be done, and the limited number of things that it does cover, are pretty close to completion. Flooding problems, certainly Mr. Roche should speak with Mr. Meehan, and I think we all know that conditions this summer were awfully severe. If you were ever going to have flooding, you were going to have it this summer. As far as insisting that the town meet the conditions that are in the site plan, of course, that's absolutely true. There certainly are no plans to change the driveway. We believe the changes are minor, in regard to both the door and the skylights, there are good functional reasons for making those changes. As far as the steeple is concerned, there is no particular functional reason whatsoever, they just decided that it was not necessary and they prefer the look of the building without it. Thank you.

Chairman Hall: Thank you. If the people who have spoken wish to rebut the rebuttal, you have five minutes total.

Michael Roche, 604 Church Street: As far as the law suit delaying the project in regards to what their attorney just brought up, it was a sixty-day period in comparison to the length of the project, I think is minimal in comparison. Number two, the changes that were done to the facility without the approval of the Zoning Board, I don't buy it. The folks have been around long enough to know that if the plan was approved by the Planning and Zoning Commission that any changes to the plans should be re-approved by them. The HVAC system, in regards to talk about bringing a new engineer in, that's fine and dandy. These are some of the questions that were asked in the conception of the system, that brought the lawsuit to a head, is that we were told again, and I'll say it again, because of the system approved by the Town of Newington, that the building design would not take anything but that. As an adjoining property owner, you can't come back ten months later, eight months later and say, look, we found a new improved way. You should have come to that agreement when we brought up the injustice in the very beginning. There was never any commitment on the property owner's part to say we will pursue another venue in regards to the HVAC system. We were told that it couldn't be done, hence the law suit. Now you are coming back and because you hired a new engineer it can be done, so therefore the money spent to change what needed to be changed in regards to what we wanted as far as property owners and the neighborhood, this was a waste of money on our part. But yet, it was approved by the Town of Newington to put the system in, they sat through the proceedings in regards to the law suit, in regards to the system that we were told as adjoining property owners or abutting property owners that it couldn't be done and now you are coming back and saying it can be done, twenty thousand dollars later out of the neighborhood pocket. Not fair, folks, not fair at all. As far as the steeple goes, there is nothing in this building that designates it as a church. Nothing. It

looks like a commercial building. I'm glad you find this amusing Mr. Chapman. You don't have to live there. But I have to deal with what is in hand as far as this project goes, and I'm extremely dissatisfied, you have taken away my privacy, you haven't finished the project, and it's no where near being completed. The performance bond was based upon getting to the point of ready for landscaping by a set date, agreed to and put forward by the Town of Newington. Not even close. Your attorney says you are very close to finishing. Correct me if I'm wrong, getting ready for landscaping means pavement complete, curbing in, fence done, and you are ready to plant. Tell me how close you are in regards to those facts. If you are that close, then you should have finished it. Not ten months later. Thank you very much.

Chairman Hall: Anyone else wish to have your five minutes.

Commissioner Ganley: (Inaudible.)

Ed Meehan: You can close the hearing and vote next month, it's up to you.

Commissioner Pane: I think we're far from closing it Madam Chairman.

Chairman Hall: Give me thoughts as to why.

Commissioner Pane: Well, Madam Chairman, I have a couple of different points. I'd like to hear from the Town Planner on what happened with the work getting completed before they asked the Commission. They seemed to indicate that they got permission from somebody from the Town, number one, number two, I'd like to hear about the court stipulation between the applicant and the abutters. I'd like a report on that, and I have one other point, but I'm going to hold that for a little while.

Chairman Hall: Does the court have anything to do with what we're involved with?

Ed Meehan: The court has nothing to do with your involvement, but the staff report attached, the August 26th staff report has an attachment, I copied for the benefit of the Commission members who weren't on at the time, or might not remember this, the page that lists the six stipulations regarding the HVAC units, the fencing, the landscaping, the kitchen vent, and it was already mentioned, the applicants agree to finish construction of the building within the time allotted by permits issued by the Town of Newington. That's pretty much the basics of the stipulation agreement. If you want more, I can get the whole agreement for you. As far as your first question, to my knowledge, no one from my office said just go ahead and build it the way it is there today. It's up to the applicant to follow the plans. I brought to this Commission back, I guess it was on the 26th, for your guidance on how to handle the Special Exception amendments relative to the architectural changes. That's why they are before you for public hearing tonight.

Commissioner Pane: Madam Chairman, wouldn't our building staff pick up on some of these things as they are going through the building inspections, as they are putting on the roof and they are inspecting the roof, wouldn't they say, hey, where are the sky lights? Then, all of a sudden maybe that issue would have come up, hey, where's the steeple, hey, there's a window and there is supposed to be a door there. I would think that one of our building officials would pick up on this. I'm very disappointed.

Chairman Hall: Anyone else have, David, you said you have some questions or comments.

Commissioner Lenares: Yeah, I jotted some notes down as the applicant was speaking and the respective Commissioners. First and foremost, I'm in favor with respect to the applicant of this

thing getting completed as I think everybody else is, I mean, let's get this thing done, but the problem I'm having is they came before the board when I was not part of this board to get their approvals for what they proposed, and it doesn't matter if the steeple is there or not, they were approved with the steeple, and I think they should be held accountable to that, because it was with the consent of this board to approve that, and the abutting neighbors. If they had come in with no steeple, and now wanted to put one, I would have the same opinion, so it's not that I'm in favor of what your cosmetics of your building should look like, because that is not for me to decide, that's for you to decide. But the changes that have been done I think are wrong. They shouldn't have been done without the approval, that were initially consented upon by this board, or its neighbors. And like I said, I'm not here to talk about what your building should look like, blue, black or gray, or the cosmetics of the building, just that there were design requests by the applicant, brought to this board before and its neighbors consented upon and this board consented upon. I think we have talked a lot about consistency in the past on the board, to be consistent with what is what approved, consistent with what our regulations are, and I just don't think that this is a little bit consistent. I think it's a little bit off the path, and I'm not saying that the changes are bad ones, or like they said, the videography couldn't be done to its highest quality, but I think they should have been, there is a procedure that has to be upheld when you make those types of changes to the building, not cosmetic changes, but architectural changes and I think it was incentive for this board to make those approvals with those proposed architectural designs. I don't think there was anyone's personnel opinion of whether the church needs a steeple or doesn't need one, because to me, it's not my decision, nor do I choose to offer one, but it was incentive for this board to make the decision for the approval of this building due to the fact that a steeple was present within the initial plans. So I think you have to kind of, I think it's almost a little bit more than the fact of whether it's a door, a window, a steeple, no steeple, skylights, no skylights, but rather than, we need to be consistent as a board to having these changes made with the consent from, a, our Planner, it's building department, our board, and if it involves neighbors, the neighbors as well. I just think we have to look at that versus whether the changes are good or bad for the look of the building but rather if it is good or bad for the look of this board. Thank you.

Commissioner Casasanta: I agree with David. I'd like, before we go to any type of a vote, I'd like to have a better understanding of what our options are as mentioned, in terms of, I really don't like having to approve something after the fact. So I would like to know what, if anything, our options are. Obviously option number one would be to deny it, but I mean, are there any other options that are available to us as well, beside that one. I mean, because right now it seems like, approve it or disapprove it, I'd like to know if there is an option C or D, or something to that effect, before we go to any type of a vote. That's my personal opinion.

Commissioner Pruett: I agree with most of the comments and what you are saying, I'm just hoping that maybe some kind of a compromise can be made here, for example, it makes sense to have that door shifted to the south side, maybe that could be a compromise. I agree with the abutting land owners, the steeple should be there. It's been approved, that's how it should be. Regarding the air conditioning units, if it's going to be less noisy for them, and be better for the neighborhood, maybe a compromise could be reached there, so, that's what I would like to see, along Mike's lines here, something could be done, what are our alternatives.

Chairman Hall: I think we already went through the air conditioning, I think that was the second time that they came back, this is really the third, and the third that we are considering now, the door change, the sky light change and the steeple change. I think the HVAC has already been dealt with. That's off the table as I understand it.

Ed Meehan: I believe it is.

Chairman Hall: As far as these changes, we also have to step back and say, if we deny it and they have to go and do it, what if that means that they are not going to continue with the project, for whatever reason. I think that our obligation is to get this project completed as fully and as quickly as possible. It is true that it has gone on a little bit longer than anyone would like. I'm sure it's longer than what the church wants as well. But at this time, we have decisions to make, is it going to move the project to completion in a fairly acceptable way, or if we say no, is it going to stop the project completely because they are unable to do it. If you are familiar with building, to retrofit sky lights at this point, I don't even want to think about it. If you look at the peak already, and I'm not saying that they did it the correct way by doing it and then coming and asking for permission to do it, but if they now go back and make a cut into the roof, and depending who does it, if they do it the right way or whatever, and then all of a sudden the building stops completely, because the project is not being done correctly, we also have not done ourselves any favor at all. So there are a lot of questions that have to be answered here.

Commissioner Pane: Madam Chairman, a steeple, skylights, and let's leave the door out of it, if this was denied, and those two things stopped this project, we have some serious problems.

Chairman Hall: Well, that's something that we need to consider.

Commissioner Pane: And by the way, Madam Chairman, we can't take any finances into consideration and.....

Chairman Hall: I didn't say finances, once.

Commissioner Pane: And if they cut into the roof it is possible to put the skylights in so that they are water tight, and they do make shades for skylights and as far as the structure for the steeple, that's usually put it on over the top of the shingles and then it's flashed in a second time.

Diane Whitney: May I speak again?

Commissioner Pane: At the next meeting, public hearing if we are going to leave it open.

Ed Meehan: Each side had a rebuttal, so if you leave it open, you can bring it up the next time.

Chairman Hall: We'll leave it open and have one more shot the next time, or at least I think we are going to, we'll have to take a consensus but I think the consensus is we will leave it open. So there are some questions that we would like to have answered before the next time.

Commissioner Schatz: The question that I have, can they come up with a time frame on this thing where, somebody puts a bond up for X number of dollars and if it's not completed within a certain time frame, then we call the bond, and we get it done. Is there some kind of a time frame on this that we could put in place and say, okay, you know...

Ed Meehan: Well, there is a bond on this site, but it's not the full performance bond that you would normally get when someone applies for a certificate of occupancy and there is work left to be done. You might need a binder, you have the binder, you need the finished course, the landscaping and so forth. This was a pre-development bond, and that is why it's not the full requirement. It covers the site, stabilization, rough grading, erosion controls and up to basically where they are now, getting the drainage structures in. It doesn't cover boxing out for the parking lot, it doesn't cover the paving, it doesn't cover landscaping, sidewalks, handicapped spaces, that has to come later. What I was told, and they are trying, with their contractor, site contractor is to get this site boxed out and at least to a binder course this fall. They've got maybe six to eight weeks left to get that done, unless we have a favorable fall. There is site work to be done there.

The site is stabilized, but they have to bring in structural fill for the sub base of the parking and they have to get the grading done. At that point, they could maybe button it up for the winter. But as far as next spring, we may have to require an additional bond because they are not, they are not going to get a c.o. unless they have that site in a safe condition to have people in the building and parking and have lighting on the site, and so forth, but there has been some misinterpretation of the time frames. This project was approved in 2005. It sat, as speakers have said for almost the better part of a year, because of issues with the foundation and the work that was done at that point. Nothing to do with Planning and Zoning, building code. They came back and the clock all reset in 2008. You re-approved the Special Exception, because of the issue with the HVAC units, you re-approved the new site plan, with different sidewalks, elimination of a handicapped space on Church Street, different grading, so technically and by statute, they have until 2013 to finish this project. Now, we don't want that to happen. The bond is extended already, but that is just for the first part of the bond, not for the full bond. They are going to have to put up, unless they do all the work, and that means landscaping and the lights working and everything else, they are not going to get a c.o.

Commissioner Schatz: In regard to the neighbor next door, washing out his property and so on, and maybe I caught it wrong, or didn't hear it, that property is sitting a good deal up in the air, over his property. How do they possibly lower down, or direct the water, I think there were supposed to be some drains in there as I recall to take the water out of the place and not put it next door.

Ed Meehan: Well, that's been done. It wasn't done correctly last spring, that was the problem. They went at the project the wrong way. They were advised by our Zoning Enforcement Officer as well as Building Department and Town Engineer to start with the drainage first. Stabilize the site with the drainage before you start piping, and they didn't follow our advice. They should be taking direction from their project engineer, not from Town Staff. He's the guy who certified the plan and designed it for them. They did not do the drainage right, and Mr. Roche is completely correct, the pictures are in the file, I think maybe on two occasions we were down there and there was a twelve inch pipe pointing towards the neighbor's property. The site has been corrected, I believe since those occurrences, the base has been rough graded, still hasn't been shaped up completely, the catch basins are in, that's just part of the work that they need to do in the next eight weeks is to finish it before they get into the winter season.

Commissioner Schatz: And they are working?

Ed Meehan: Their contractor was not there the last couple of times that I have been there. Again, we cannot take the project over for them.

Commissioner Schatz: No, I understand that.

Commissioner Lenares: Ed, thank you for pointing out that critical date, you said they have until 2013, I don't care if they don't finished the project until 2023, doesn't matter. What I'm saying is that it is bigger than this, and with respect to the (inaudible) I really do apologize because you got caught in the middle of something that I think is a little bit bigger. You can't make changes to the design, that's not approved, and you have to look at what is going on, you have to focus on what I think exactly happened. We had changes to the building that happened that weren't approved and you have, and they have already been done, which is wrong, so I don't know what you do to rectify that situation. I think we have to lean on Ed maybe, and I'm not saying that the church has to be finished tomorrow, 2013, to me it doesn't matter as long as hopefully they get it in soon enough and then they can go along with their business, but I think the matter as a whole is bigger than making door a window, steeple, no steeple, I can't emphasis that enough. We can't take into consideration approval or disapproval because the project has been prolonged, and I think

that is maybe what might be happening. If it does, I would disagree with that, because of the fact that if they make these changes without our approval, then we really shouldn't even stand here as a board because then every other building would make approvals, changes, I'm sorry, without our approval.

Commissioner Casasanta: I agree Madam Chairman, we don't want to do anything that necessarily that is going to either cause the project to cease, or to delay it any further than we absolutely have to, than is absolutely necessary. However, to David's point, my bad is not a reasonable defense, and we as a Commission need to be able to hold the applicant accountable in some fashion, and I don't know what that is, and I guess that is what I would like some kind of answer to if at all possible is what it is that we can do to kind of make, remedy that situation so that we come to some kind of a compromise that is suitable for everybody. That's my two cents.

Commissioner Ganley: First of all, we have been all over the lot with this, no pun intended but we have been all over the lot with this issue. We cannot impose additional sanctions or bring in issues not related to the steeple, the air conditioning or the window to use as leverage to get something else from the applicant. We can only stick to two issues, and you articulated them very well David.

Commissioner Lenares: Thank you.

Commissioner Ganley: The matter of the steeple, are we going to let that slide, or not? If we compel them to put up the steeple, we cannot say, okay we're going to make you put up the steeple and then we are going to stick on all these other kinds of things.....

Commissioner Lenares: I wasn't talking about.....

Commissioner Ganley: I know you're not, I want to get this on the record. So we can't start what they call piling on in a football game, we just can't do that sort of a thing. We are going to have to narrow this thing down, to the steeple, just let me expound a bit on the steeple issue. We're not actually in a position to say what a place of worship is going to look like. While I was sitting on this Commission, we approved a church which is presently in a factory building, and the Knights of Columbus building which had a bar and was an entertainment hall, and we allowed that to be a church plus we put a residence in the back, so we've got to get the issue of appearance off the table. It really has to come off the table. The only issue before us, at least as I see it, is the steeple, and then we have to justify why we want the steeple. That is, if we say, you have to have the steeple, because it will make it look better, that's not the reason you have to make them have a steeple, okay. The issue can only revolve around prior approval and how we're willing to stick to it.

Commissioner Casasanta: I don't know whether you were directing your comments to me, or not because if you are, you missed my whole point.

Commissioner Ganley: No, no, I wasn't and I did get your point.

Commissioner Casasanta: Okay.

Commissioner Kornichuk: I just have one question. Ed, can we consider what the neighbors would like? You know, well let's say, there are three things, the steeple, the skylights and the door. Now, if the neighbors were willing to, you know, because I think the neighbors should have something to say in this because they are the neighbors that have to look at this. Now if the neighbors were to say that they would abide by the other two, say they just want the steeple and they were willing to say we would forget the other two, could we consider that, or is it just.....

Ed Meehan: No. Based on your regulations, zoning code and state statutes, it's not a popularity contest. Let me back up because I think David hit on a point and I think Mike followed up on it. What are your options? Where do you go? They've come in, they've begged for forgiveness, what's the sense here? The Commission gave me direction back on the 26th of August, to bring this application back. I brought the changes to the site plan and the architecture to your attention, and I, in the staff report you will see it says changes to the proposed church architectural elevations may require a new Special Exception approval from the Commission. That's been a requirement of the Special Exception going back to 2005, the 2005 Special Exception and the 2008 Special Exception.

Commissioner Pane: We don't have that staff report in front of us, do we?

Ed Meehan: It went out with the packet I believe.

Commissioner Pane: I didn't get it.

Chairman Hall: The only one we got staff was Toll Brothers.

Ed Meehan: I'm sorry, I'll make sure that you get it. It was August 26th. The Commission at the time that we discussed this, in giving me direction, led me to believe that you thought that these changes were significant enough to bring it back to public hearing. You did not want us to do this at staff level. That's why they are here. That's the option. They are here because you thought they were significant enough that you wanted to see them. Some said, well, I want to see them because I like steeples, maybe, I'm not putting words in your mouth. Other Commission members said, and I think the second option is, we should follow the procedure. If they are going to amend the Special Exception, they should come back and follow the procedure, which is going back and asking this Commission to amend the architectural elevations. That is why they are here tonight. They are here for three reasons, to amend the architectural elevations and I don't believe and I will say this to staff, and I said it at the prior meeting, you have the right under the general statutes or Special Exception to dictate architecture for any building unless it is in your business town center zone, where you adopted the Village District Guidelines as a statute, or you are in the historic district. Many projects change as they evolve through the process. I'm not saying that this hasn't been a tough project, because there have been many changes but at the point we're at right now, with these three items, this is all that is before you.

Chairman Hall: Other questions, comments. The architectural changes are important to discuss, and review. It is even more important that they get that site work done, because we don't want to go through the winter and come to another spring where we have another flooding issue. I'm hoping that they are not going to stop doing that, waiting for some kind of a decision on the architectural, because the architectural in the scheme of things is much less important than getting this site ready, finished, and what it should be, and hopefully there won't be any changes on that, because we have been around the block on that many times.

Commissioner Pane: Madam Chairman, if the Town Planner could have staff look into, looks like slopes over on the abutting side of the property there are greater than two to one. Maybe it's because it's not complete, but I'm very concerned about it because it can't exceed a two to one slope, otherwise, it's going to have to have a retaining wall, and I recall that the map that was approved by this Commission had a two to one slope. Maybe some changes in grades have caused a steeper grade. So I would just ask the staff to look into that.

There is also one other thing, they took the grade down underneath the canopy and now there is about three feet of concrete pillars exposed. It doesn't look like there is a footing under it, and it was just a pipe thing filled with concrete, sonatube filled with concrete, and it doesn't look like it had any footing underneath it, and doesn't look like there is anything attaching the wood frame to

the concrete. Usually there is a metal underneath it that holds it in case it gets hit it doesn't fall off the concrete, so there's another thing that the Town Engineer is going to have to look at.

Ed Meehan: Many of these are building code requirements.

Commissioner Pane: I know that they are, I just wanted to make sure that the Town was looking at them because obviously.....

Ed Meehan: I want to put this on the record because I want to say this publicly because the applicant is here and there are maybe neighbors here. We have said to this applicant, use your professionals. Use your professional engineer, get the site excavator out there, you can't stop a project like this at this time in the construction season. You're going to be, this project is going to be hurting in eight weeks unless you get your people back there. The Town staff is not going to take over and run the project. We're not going to become your general contractors. Because if something goes wrong, then you are going to come back and say, the Town Engineer said this, or the Building Inspector said that, you have licensed contractors and engineers, those are your professionals. That's how everybody else does it in town.

Commissioner Pane: I understand, Madam Chairman, if I may, that's an excellent point Ed, but I hope that our town staff is aware of some of these things and they, to protect everybody because it appears that some things were skipped. I notice that when the electrical trenches were put in, maybe they didn't call for in an inspection, and they didn't have it buried deep enough and then they had to redo it, and then there wasn't sand around the pipes. I'm just concerned about some of these things. Whether or not they are calling for inspections or not, for instance, we talk about the roof and why the skylights didn't go in, I mean, our building official probably should have caught some of those things, and stopped them months and months ago. Thank you Madam Chairman.

Chairman Hall: Any other comments? My question at this point is, if we leave it open, what do we hope to accomplish? What would leaving it open do as far as moving this forward? That's my question.

Commissioner Ganley: If they were to come back at another time and continue this, we'd have to narrow it down to the steeple, yes or no, and what is to be done if it's no. We can't digress to vegetation and drains and pipes and stanchions and so on, because that's not before us. Those are not the issues that we have to consider. We have to consider under Special Exception precisely what we've been handling. The steeple, the door and that glass window. That's it folks. So if it is going to come back, that's it. We've digressed an awful lot this evening away from the primary issue and if it's going to come back to us I hope for the sake of getting this off the table and allowing the petitioner to make some kind of decision that's up to us to narrow down what it is that they are going to have to make a decision about. Once again, it's the steeple, the window and the door. Folks, we have to reconcile that as the only way we can proceed to get this off the table. Thank you very much.

Chairman Hall: To go back to my question, leaving it open, what more information do we need in order to answer those questions.

Commissioner Schatz: I say close it.

Commissioner Kornichuk: I can't see where we are going to get any more information.

Chairman Hall: I don't either, but at some point it seemed as if you wanted to keep it open, and I'm willing to do that if you think there is going to be more information. I don't want to keep it open

to have another night like tonight to get into the same spot. Where are we going to get further by keeping it open?

Commissioner Pane: I think I was the one who suggested that we keep it open but I'll concede to closing it Madam Chairman. I was, there was only one other point that I was concerned about, and it was whether or not this applicant, or any applicant when they come in for Special Exception, it's a special exception, and they get Special approval for something, and they did that one time, and then they came back to us and wanted to make some changes, and then everything, and when they came back the second time, everything was on the table, buffering, we looked at everything again, because it was coming back to us and the public had a right to look at everything. I'm trying to find some things in the regulations because I was under the impression that whenever a Special Exception comes back to us, it pretty much opens up that you make sure the buffer is correct, make sure, the slopes, the buffer, mainly the buffer is an extremely important thing to abutting property owners and when you give approval, special exception approval to something for something to be built on a piece of property, abutting residential property, you have to consider the buffer and in this instance they clear cut more property than it appeared that they were originally going to cut. So that was one of my concerns, and I can't find it here, and Ed is probably correct, that only those details could be talked about, but I thought that special exceptions, it opened it up where you look at the entire project again, but I'll concede now because those three issues are the ones that are on the table and I'll research that later on for the future, so I have no problems closing it, Madam Chairman.

Commissioner Ganley: That issue was resolved at the August 28th meeting, and I have the minutes here which I highlighted, and I'm going to read them back into the record to be sure that we got this thing straight. From page 15, "Commissioner Pane: When it comes back to Public Hearing, doesn't it open it up to other things, like improving the buffer system too, Ed?

Ed Meehan: No.

Commissioner Pane: Why?

Ed Meehan: Because you are acting on a special exception amendment to that amendment, which goes back to 2005 which said, changes to the architecture may require a new special exception approval. It doesn't open the floodgates to start tagging on more landscaping.....

Commissioner Pane: Well the reason I ask if that they have stripped the land and etc., etc., etc., I don't know if there are any trees along the property line.

Ed Meehan: That was shown, that is the way that the original site plan was designed.

Commissioner Ganley: We have to be very careful that we do not use bringing them back as a ruse to impose brand new sanctions, or raise issues that are outside that which they bring before us." Precisely what happened this evening.

Chairman Hall: Right, they are bringing us the window, the HVAC and the steeple, those are the three items. Now, internally we may again when we talk about this bond tonight, maybe also discuss the fact that we want to make sure that over the winter that we don't end up, they can't get the landscaping done. Well, are we going to end up with the same kind of thing with snow run off and the heavy rains that we had in the winter with the flooding. We're got to be careful about that too, so I think we talk about that when we talk about the bond."

Commissioner Ganley: The issue was settled August 28th. Three issues, no landscaping, no buffering, it's right here in the minutes and I just read it again.

Commissioner Pane: Madam Chairman, I'm glad he recited the minutes, I'm glad he's up to date on that, I wasn't really concerned with the minutes and I'm aware of the conversation we had the previous meetings. What I am more concerned about is our regulations and reading the regulations, all right, Mr. Commissioner. 5.27 in our regulations, amendments to the conditions of a special exception shall require a new petition and public hearing as required by the Connecticut General Statutes. So you are amending conditions and it requires a new special exception and regards a new petition for public hearing.

Chairman Hall: This petition was centered on changes to architectural elevations and what they brought to us tonight were the steeple, the skylights and the door. Those were the changes.

Commissioner Pane: I'm not going to argue with you now but that's the point and I'm going to....

Chairman Hall: You will agree to close.

Commissioner Pane: Yeah, I'll agree to close.

Commissioner Casasanta: Close

Commissioner Pruet: Close.

Chairman Hall: Okay, close, close, close. We are going to close this petition this evening, Wednesday, September 23rd, Old Business on the 14th of October, and anyone who has questions for Ed between now and then please get them to him, so that on the 14th, we can have some resolution to this. Call me too, let me know what you are thinking. Okay, thank you for your indulgence on that.

III. PUBLIC PARTICIPATION (relative to items not listed on the Agenda-each speaker limited to two minutes.)

Bob Corpack, 142 Barkledge Drive, Newington: The reason that I am here tonight is one of the items that is lower on your agenda, under staff report, the bond reduction.

Chairman Hall: Right, but you do realize that that is on our agenda so you cannot speak to it.

Bob Corpack: Well, I had hoped that I might get something in.

Chairman Hall: No, because it specifically states items not listed on the agenda.

Bob Corpack: I see, I'm sorry.

Chairman Hall: So, I'm sorry, and I know that this is going to be very frustrating, but I think, in our discussion this evening, hopefully you'll have some questions answered.

Bob Corpack: Okay, thank you.

Chairman Hall: Thank you, and I'm sorry. Anyone else wishing to speak on items not listed on the agenda?

IV. MINUTES

September 9, 2009 Regular Meeting

Commissioner Pruett moved to accept the minutes of the September 9, 2009 Regular meeting. The motion was seconded by Commissioner Kornichuk. The vote was in favor of the motion, with six voting YES and one abstention (Hall.)

V. COMMUNICATIONS AND REPORTS

None.

VI. NEW BUSINESS

None.

VII. OLD BUSINESS

None.

VIII. PETITIONS FOR SCHEDULING (TPZ October 14, 2009 and October 28, 2009.)

- A. Proposed 2020 Plan of Conservation and Development – Chapter 126, Section 8-23, Connecticut General Statutes, Public Hearing, October 14, 2009.

Ed Meehan: The big one is the Plan of Conservation and Development. The Chairman and I have a meeting the night before that, October 13th, to make a presentation to the Town Council. We had hoped to do that in August, they cancelled their second meeting, and they were busy the last meeting, so we are going to be before them on October 13th. We will have a public hearing and presentation on the 14th. There has been a lot of discussion on this document, it's up on the web page, it's available in the Town Clerk's office, it's available in the library at the public reference desk, it's available here in my office and we've made twenty, twenty-five black and white copies for any member of the public who wants to take one home with them. I hope we get good input, it's an important document, and we have a good turnout.

Commissioner Pane: Madam Chairman, are we going to plan a different room for that public hearing?

Ed Meehan: I can get B and C, I believe, I'll try to get that for that night. We are going to try and do a power point and B and C has an overhead projector.

Chairman Hall: If we do then, it certainly will be, and I will try to do a follow up to remind us that we are over there. Might want to park in the back, it's easier to get there.

IX. PUBLIC PARTICIPATION
(For items not listed on agenda)

None.

XI. STAFF REPORT

Bond Reduction - Woodlands of Newington Pulte Homes

Chairman Hall: With regard to the bond reduction, Woodlands of Newington, Pulte Homes.

Commissioner Pane: We used to go and visit some of these sites before we just automatically reduced bonds, you know, we used to do site visits, we used to go there, look at the property, you know, and make sure things were completed besides having the town look at it, have this Commission as a board go there, and it's obvious from the turnout here from the public that some of these people are very concerned with some work that has been taken place over there at this site and I would like to make a motion that we not reduce it at this meeting, put it on the agenda for next meeting, and schedule a site visit for the public and for us so that we can make sure that when we vote on something, we are sure that we're acting correctly.

Chairman Hall: Well, we can do that under discussion, you can vote no, but I would like to bring it forward and.....

Commissioner Pane: I'll take my motion off the table then.

Chairman Hall: Thank you.

Commissioner Pane: But I'm very concerned and I would hope that some of the other Commissioners and I'm not saying that this can't be reduced, I'm just saying, we used to go there, look at the site, with the staff, just review it, doesn't take long, half an hour before the next meeting and then we at least can act intelligently on something, and not always rely just on the staff and because sometimes they do miss things unfortunately and that's why we are here as a board, just so we can double check things. Thank you Madam Chairman for your time.

Chairman Hall: Okay.

**Woodlands of Newington
Pulte Homes Developer
Bond Reduction**

Commissioner Schatz moved that the site development completion bond held for Phases 1 and 2 Woodlands of Newington be reduced from \$1,133,000 to \$160,000 based on the revised bond estimated approved by the Town Engineer with the stipulation that the reduced bond amount shall be available to correct any item on the attached September 16, 2009 close out punch list.

The motion was seconded by Commissioner Kornichuk.

Chairman Hall: Open for discussion

Commissioner Aieta: I've gotten several calls from residents who live in the area, I don't know how they know that I was on the zoning board, but apparently they did. There is tremendous concern on the part of the residents up there that there is work that needs to be done that with the reduction would not have enough money left over to do the work. There are drainage problems, they have problems with the roadways, there is landscaping that is not done and they are very concerned with the reduction in the bond. I served on this board in 1977-78, 79, for ten years, we always went out as a Commission and did, we didn't rely just on the staff, the staff was there, they provided information as far as what the costs were, but we as a Commission went out and actually looked at and made the determination of what should be reduced and what shouldn't be reduced as far as bonds are concerned and I think that should be a practice that we should go back to. If you look, some of these bonds go back decades that have not been resolved, and maybe they could be resolved if this Commission got more involved in that process. So I would suggest to you, as a Commission that you not reduce this, go on a field trip, look at it and get some more information as to what these costs are. As a Commissioner, you get four or five phone calls from residents up there, you have to step back and say, something is drastically

wrong, and for the turn out that we see here, most of these people stayed until the end of this meeting it's obvious that they are here for this reduction in the bond.

Chairman Hall: Ed, can we have your report on this, please and then I'll take questions from....because I want him to fill it, we all have questions, we all have comments but let's hear that he has to say.

Ed Meehan: This project, this is the first reduction that Pulte Homes has asked for since the initial bond was posted when the project started, so there have been no reductions up to the point. The work that is left, the bonds were posted in two sections for two different phases, and the forty-one items on the attached cost estimate is based on the generic original bond. The Town Engineer and I have reviewed this, we've been up to the site. There are items that are not adequate in the field. Very obvious to us when we were up there, there are areas of drainage problems in a couple locations on critical areas of town roads, one being the most important at the intersection of Fenn Road and the road into the site where water coming down the Fenn Road gutter overshoots the catch basin, it could be a winter icing problem. We also know of some drainage problems inside the site, at various locations, both related to the back loop that hasn't been finished paving yet, so there could be issues there. We want to see how that finished paving course goes in, as well as areas around some of the yard drains where, when the turf was installed this past spring, the ground was wet to begin with, and we were up at a couple of locations where it was, it was almost quaked, quake the area, so the swales were not properly formed. The developer also put catch basin silt traps throughout the project and they were not, this spring properly maintained so they actually acted as dams rather than drains. He was directed to remove those, both within the site and in basins on Fenn Road. Be that as it may, the Town Engineer looked at this, and feels that \$160,000 is adequate to cover the remaining work, with the caveat, as it was read, that we don't want to be tied down to any one line item. As you notice here, under storm drainage there are zeros for every one of those items. That's not acceptable to staff, we wouldn't recommend you accept that. We feel that there should be flexibility within this \$160,000 to move the money around to correct the problem. For example, we know that the land surveyor under contract with Pulte, is out there setting all the mere stones, developing the as built plans, and certifying the final plans for acceptance of the town road. So there is money there that we wouldn't include in part of the bond, but we would move over to drainage if we felt it was necessary. This is a recommendation, from the staff to the Commission, we take your direction as to how you want to handle it, there are two letters of credit on file, posted by Morgan Bank I believe it was. I have been in contact with various members of the Association on a couple of occasions, as well as the property manager up there, we shared the information in our files. We know there are issues with drainage, there is one section that hasn't been paved. For the most part, normally at this point in this project, we feel that \$160,000 is adequate. One final thing I would say, apart from the site performance bond, which is under the purview of this board, we have heard that there are issues with individual home owners and workmanship on their units which go beyond what we can do with this bond. So there are two issues, I don't know what issues came to Commissioner Aieta's attention. If you want to do a site walk, I'd be more than happy to accompany you, have the Town Engineer available. I believe the Association also has their own engineer working on this, and our Town Engineer has said that he would collaborate with that engineer and if they have information that we are not aware of, take that into account. We are not trying to give these guys a pass, but we are all trying to be reasonable with this project. There are still some units in the far west end of this project that haven't been completed and the roads have not been accepted yet by the town.

Commissioner Pane: Madam Chairman, you heard me before, I can't in good conscience vote on this and, matter of fact after this is hopefully denied, I would like to make a motion that not only we do a site visit, but I'd like to do a public hearing over there so that we can have the public up there, that are over there and get input from them. Just to make sure that things are okay. That's

our job, yeah, it's going to take a little bit of time, but I think we need to hold a site visit, a public site visit over there so that the developer has a right to come, the homeowners have a right to come, and we'll be there and we can get everything out in the open and that way we can intelligently vote on this next meeting. Thank you, Madam Chairman.

Chairman Hall: Any other comments?

Commissioner Camerota: I just wanted to note for the record that I also was contacted and the concerns that were raised to me were both the roads and the drainage, not things in the individual units.

Commissioner Schatz: I agree with Commissioner Pane that we should take a look at what is going on up there.

Chairman Hall: Other comments? I agree too, I don't necessarily want to have, in the same night, a what you call a public hearing, I would much rather have the residents contact the Building Department so that we can have a list of what their complaints are before we get there, so I don't want it to turn into a back and forth on the site, I would rather have it be that we know what we are looking for, we know what their concerns are, and therefore we can intelligently look at them, evaluate them, and then, if it is going to be the night of our next meeting, which is what, the 14th, it would have to be no later than 6:00 p.m. because it is going to start to get dark. So, first of all, we'll take a pass around the committee to see if they are willing and able to do that, and also with my idea of having questions or concerns ahead of time, so that it does not turn into, because we simply aren't going to have time.

Commissioner Pane: I understand, that's an excellent point. It's an excellent point, and the only other thing, Madam Chairman, if we have a meeting up there, it's a public meeting and if I'm not mistaken, they have a right to come to the meeting anyway. So they can come to the meeting, I don't know how much you can talk, but you may as well listen to us, and I just wanted to get that on the record, they will have a right to be at that meeting, but to get that information in is an excellent suggestion so we can conserve time, Madam Chairman.

Chairman Hall: And know what we are looking for.

Commissioner Pane: Absolutely.

Commissioner Ganley: We have precedent for this, we have done this many times. The only difference is we are doing it for a bond reduction, we can't actually have a public hearing for a bond reduction, but certainly, under the purview of doing a site inspection it makes some sense.

Chairman Hall: We've had many of these come back to us after the fact.

Ed Meehan: This gives us the opportunity to inform the project manager for the site, and tell him what is going on.

Commissioner Casasanta: Do you need a motion to table?

Chairman Hall: Well, it's been moved and seconded and discussed so not we are going to take a vote on whether we are going to revise this, and I think I know what the answer is going to be.

Commissioner Ganley: Why don't you just withdraw the second, the motion dies, can you do that?

Chairman Hall: I think I would rather have it yea or nay and then say, what our next step is going to be and have it on the record.

Ed Meehan: I would appreciate that, because then I can go back to Pulte and say the bond reduction was defeated.

The vote was unanimously in favor of denying the motion with seven voting Nay.

Chairman Hall: Now, having done this, our next suggestion is to have a site meeting at 6:00 p.m. October 14th, and I think we should meet at that little office area, should we? Or is there a better area where, parking is tough guys, so be careful when you go up there.

Ed Meehan: I think it should be up the hill, up the hill where the first mail kiosk is, because then you are away from the entrance. People stop there, pick up their mail at night, go up the hill a little farther.

Commissioner Pane: Is the second course on?

Ed Meehan: The second course is on, but not, the back loop wasn't paved today. You could go all the way to the back loop.

Chairman Hall: Why don't we do that, I think there is more room up there and it's a little more level up there. All right, it's Barkledge, when you come up, Sterling goes to the left, Barkledge takes a right, it will be at the end of Barkledge.

XI. REMARKS BY COMMISSIONERS

Commissioner Pane: Madam Chairman, when you were out last meeting, there was a little procedural problem, and Commissioner Ganley, this is no disrespect to you at all, this is just to make sure that this, there is consistency in this Commission. There was a public hearing that the sign wasn't up, and so that they were going to, we were going to have to leave that hearing open because the sign wasn't up. We should have heard the public and the applicant last meeting, and left the meeting open and that is how we have been operating for the last, as long as I can remember, and I have a couple of cases where that is exactly what happened. Petition 46-08, 240 Day Street, "Chairman Hall, any other questions? As the Town Planner has said, there is a red and white sign that needs to be on the property so that people know that there is a petition and legal notices. So we are going to leave this hearing open, October 22nd. Also, Petition 41-08, 171 Pascone Place, Newington Heights, I didn't copy down the minutes. There is also at least another half a dozen other occasions where if something was written wrong, in the advertisement or the sign wasn't up, what the procedure was of this Commission was to have the hearing, have the people speak about it, have the applicant, have the rebuttal, leave the meeting open, do the proper necessary things, then come back next meeting again and have it again, and I just wanted to get that out because I think we need to be consistent in this Commission. Thank you.

Chairman Hall: We do, we strive for consistency, however, it is up to the Chairman to decide at that meeting how they are going to proceed. I understand that there was a disagreement. The only thing I ask for this Commission and I have asked for it from day one, is that we respect each other and that we treat each other with civility and there is no excuse for not treating each other with civility. We can explain how we want things done, why we think things should be done, in a civil manner.

This evening you had a very good explanation why you wanted this done, Tom made his decision at that point, it stood. We had our public hearing tonight. I know what you are saying, we strive

for consistency, and we will continue to strive for consistency. But we need to respect each other and we need to be polite.

Commissioner Pane: I would just like to state for the record and I wasn't uncivil at the last meeting, I wasn't disgraceful, I was disagreeing with a procedure that the chairman was taking, and I think as Commissioners, our Town Planner should advise our Chairman that the proper method was the method that I was explaining, because that is what we have always done. And I'll drop it there, thank you Madam Chairman.

Chairman Hall: All right, and that was in the past and we will move forward and hopefully not run into an issue again, but it is the Chairman's choice as to how the meeting is run, and if people disagree that's all well and good, but please, please do it in a polite and civil manner.

XII. ADJOURNMENT

Commissioner Kornichuk moved to adjourn the meeting. The motion was seconded by Commissioner Pruett. The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary

